

State of South Dakota

EIGHTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2014

814V0212

SENATE BILL NO. 74

Introduced by: Senators Lederman, Frerichs, Jensen, Jones (Chuck), Kirkeby, Maher, Monroe, Otten (Ernie), Rampelberg, Rave, and Vehle and Representatives Hoffman, Cronin, Erickson, Feickert, Feinstein, Gosch, Hajek, Hickey, Johns, Lust, and Magstadt

1 FOR AN ACT ENTITLED, An Act to provide for the consideration of joint physical custody
2 of a minor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. In any custody dispute between parents, upon application of either parent, the
5 court shall consider granting joint physical custody of a minor child.

6 The court shall consider the factors set forth in section 4 of this Act, and shall make written
7 findings of fact and conclusions of law regarding the best interests of the minor child, unless
8 waived by both parties.

9 Section 2. A finding by the court that a parent has a history of committing domestic abuse
10 or has an assault conviction as defined in § 25-4-45.5, creates a rebuttable presumption that joint
11 physical custody is not in the best interests of the child.

12 Section 3. Prior to ruling on a joint physical custody petition the court may require the
13 parties to participate in a home study or a custody evaluation. Prior to the court ruling on a joint
14 physical custody petition, either parent may request mediation pursuant to § 25-4-56.



1 In any case where the court orders the parties to participate in a home study, custody
2 evaluation, or custody mediation, the court shall allocate the costs of the same between the
3 parties.

4 Section 4. In considering a contested request for joint physical custody, in addition to the
5 traditional factors for determining the best interests of a child, the court shall consider the
6 following factors:

- 7 (1) Whether each parent is a suitable physical custodian for the child;
- 8 (2) Whether each parent has an appropriate dwelling to support physical custody of the
9 child;
- 10 (3) Whether the psychological and emotional needs and the development of the child
11 will suffer due to lack of active contact with, and attention from, both parents if joint
12 physical custody is not granted;
- 13 (4) Whether one parent has denied, without just cause, the child the opportunity for
14 continuing contact with the other parent. Facts supporting an application of the
15 presumption in § 25-4-45.5 constitute just cause;
- 16 (5) Whether the parents can show mutual respect for and effectively communicate with
17 each other regarding the child's needs. When considering this factor, the court shall
18 include a determination of the degree to which the parents are in general agreement
19 about their approach to daily child rearing matters;
- 20 (6) The extent to which both parents actively care for the child;
- 21 (7) Whether each parent can support the other parent's relationship with the child. When
22 considering this factor, the court shall include a determination of conflict between the
23 parents, as joint physical custody requires substantial and regular interaction between
24 the parents on a myriad of issues;

- 1 (8) Whether the joint physical custody arrangement is in accord with the child's wishes
2 or whether the child has strong opposition to joint physical custody, taking into
3 consideration the child's age, maturity, and reason for the objection;
- 4 (9) Whether a parent has intentionally alienated or interfered with the other parent's
5 relationship with the child;
- 6 (10) Whether one or both parents are opposed to joint physical custody. A parent's
7 opposition to joint physical custody is not determinative in itself, but only one factor
8 for the court to consider;
- 9 (11) The geographic proximity of the parents;
- 10 (12) Whether the safety of the child, other children, or the other parent will be jeopardized
11 by an award of joint physical custody;
- 12 (13) Whether a parent allows another person custody or control of, or unsupervised access
13 to, a child after knowing the person is required to register or is on the sex offender
14 registry as a sex offender under chapter 22-24B;
- 15 (14) Whether a parent has attempted to influence a custody determination by alleging,
16 falsely or without good cause, that the child or the sibling of the child has been
17 subjected to physical or sexual abuse or abuse and neglect, as set forth in § 25-4-45.8.

18 Section 5. If both parents agree to joint physical custody of a child, the court is not required
19 to consider the factors set forth in section 4 of this Act.

20 Section 6. Nothing in this Act creates a presumption of joint physical custody. The court
21 shall determine the appropriate physical care, custody, and control of a minor child based on a
22 determination of the best interests of the child.

23 Section 7. The enactment of this Act does not constitute a substantial change in
24 circumstances justifying the modification of existing custody orders, but the provisions of this

- 1 Act shall apply to modification proceedings which are otherwise properly before the court.